

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Annual Earnings Assessment Proceeding (AEAP)
Application of Pacific Gas and Electric Company
for Approval of Energy Efficient Shareholder
Incentives for Third Claim for Incentives for 1998
Accomplishments for Pre-1998 Programs, and for
Recovery of Costs for the 2002 Interruptible Load
Programs.

Application 03-05-002

In the Matter of the Application of Southern
California Gas Company (U904G) for Authority
to Increase its Gas Revenue Requirements to
Reflect its Accomplishments for Demand-Side
Management Program Year 1997 and
Low-Income Program Years 2001 and 2002 in the
2003 Annual Earnings Assessment Proceeding
("AEAP").

Application 03-05-003

In the Matter of the Application of San Diego Gas
& Electric Company for Approval of Incentives
Associated with its Accomplishments for Low
Income Program Year 2001 and Demand
Response Program Expenditures in the 2003
Annual Earnings Assessment Proceeding
("AEAP").

Application 03-05-004

In the Matter of the Application of Southern
California Edison Company (U338-E) for
Approval of Pre-1998 Demand-Side Management
Earnings Claims, 2001 and 2002 Low Income
Energy Efficiency Earnings Claims, and
Interruptible Load Programs Memorandum
Account Balances Recorded in 2002, and In
Support of 2002 Energy Efficiency Program
Performance Achievements.

Application 03-05-009

**ADMINISTRATIVE LAW JUDGE'S RULING
ADDRESSING ELIGIBILITY FOR COMPENSATION AWARD**

Pursuant to Public Utilities (Pub. Util.) Code §§ 1801-1812, The Utility Reform Network (TURN) filed a Notice of Intent (NOI) to claim compensation for its participation in this proceeding. This ruling finds that TURN is eligible to file its claim for compensation.

Timelines

Pub. Util. Code § 1804(a)(1) says in relevant part that “A customer who intends to seek an award...shall, within 30 days after the prehearing conference is held, file and serve...a notice of intent to claim compensation.”

The prehearing conference in this proceeding was held on July 24, 2003 27, 2003. TURN filed its NOI on August 25, 2003, which is the 30-day deadline due to the intervening weekend. We find that TURN has timely filed its NOI.

Qualification as Customers

Administrative Law Judge rulings issued pursuant to Pub. Util. Code § 1804(b)(1) or § 1804(b)(2) must rule both on whether the intervenor qualifies as a customer and in which of the three statutory categories the customer falls into. (Decision (D.) 98-04-059, *mimeo.*, p. 31.) Section 1802(b) provides in relevant part that:

“Customer means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represents the interests of residential ratepayers...”

D.86-05-007 dated May 7, 1986 interpreted this statutory definition and clarified the three customer categories set forth in the statute. As summarized by the Commission in D.98-04-059, Category 1 is an actual customer who represents more than his or her own narrow self-interest; a self-appointed representative of at least some other consumers, customers or subscribers of the utility. A Category 2 customer is one who has been authorized by actual customers to represent them. A Category 3 customer is a formally organized group authorized by its articles of incorporation or bylaws to represent the interests of residential customers.

A party seeking eligibility to claim compensation is required to state how it meets the definition of a customer and, for Category 3 customers, point out where in the organization's articles or bylaws it is authorized to represent the interests of residential ratepayers. If current articles or bylaws have already been filed, the group or organization need only make a specific reference to such filing. Groups should indicate in the NOI the percentage of their membership that are residential ratepayers. Similarly, a Category 2 customer is required to identify the residential customer or customers that authorized him or her to represent that customer. (D.98-04-059, *mimeo.*, pp. 29-30, 83, 88.)

TURN is a non-profit consumer advocacy organization with a long history of representing the interests of residential and small commercial customers before this Commission. TURN's articles of incorporation specifically authorize its representation of residential customers, and TURN states that the vast

majority of its 30,000 members are such ratepayers.¹ Accordingly, we find that TURN qualifies as a Category 3 customer.

Planned Participation

Pub. Util. Code § 1804(a)(2)(A)(I) requires that the NOI include a statement of the nature and extent of the customer's planned participation. The Commission has stated that the information provided on planned participation should provide the basis for a more critical preliminary assessment of whether (1) an intervenor will represent customer interests that would otherwise be underrepresented, (2) the participation of third-party customers is non-duplicative, and (3) that participation is necessary for a fair determination of the proceeding. The Administrative Law Judge may issue a preliminary ruling on these issues, based on the information contained in the NOI and in the Assigned Commissioner's scoping memo. (D.98-04-059, pp. 27-28, 31-33.)

TURN states that it is interested in verifying the shareholder earnings associated with program year 2002 and addressing policy and program issues that will be considered in this proceeding. To the extent that these same verification issues are addressed by other parties, or are represented by other parties which do not seek intervenor compensation (*e.g.*, the Office of Ratepayer Advocates), TURN runs the risk that their efforts may merely duplicate those of others. To the extent that such duplication is found, TURN is at risk of receiving

¹ We require groups such as TURN to include in their NOIs a copy of the authorization in their articles of incorporation to represent residential customers, or to provide a reference to a previous filing. (See D.98-04-059, *mimeo.*, p. 30.) TURN provided the relevant portion of its articles of incorporation in the NOI submitted in A.98-02-017, and again in A.99-12-024. TURN attests to the fact that its articles of incorporation have not changed since the time of those earlier submissions. See TURN NOI, footnote 2.

reduced or no compensation for such efforts. The NOI does not provide us with sufficient information to make such a determination at this time. The Commission will consider the issue of duplication of effort when it reviews the subsequent request for compensation.

The Commission has also explained that participation by intervenors is not necessary for a fair determination of the proceeding if the customer argues issues that are irrelevant, beyond the scope of the proceeding or beyond the Commission's jurisdiction. (*Ibid.*, pp. 31-32.)

Here, I preliminarily find that the planned participation of TURN, as described in its NOI, is necessary for a fair determination of the proceeding. The issues that TURN intends to address have been identified in the August 7, 2003 Assigned Commissioner ruling in this proceeding.

Estimated Compensation Request

TURN presents the following estimate of compensation costs, assuming that it can actively participate in the verification of earnings claims:

Fees of Marcel Hawiger, Attorney (100 hours at \$225/hour)	\$ 22,500
Fees of Daniel Edington (60 hours at \$175/hour)	\$ 10,500
Consultant Expenses	\$ 15,000
Other Direct Expenses	\$ 2,000
TOTAL	<u>\$50,000</u>

The NOI fulfills the requirements of Pub. Util. Code § 1804(a)(2)(A)(ii) by including an itemized estimate of the compensation expected to be requested. Although this ruling does not address the merits of the final compensation claim by TURN, I reiterate and clarify my cautionary observations in a ruling dated

October 12, 1999 in Application (A.) 99-07-002 *et al.* that intervenors should carefully review Commission orders and be mindful of the areas where the Commission reduced either the hourly rates or number of hours claimed.

Significant Hardship

Pub. Util. Code § 1803 authorizes the Commission to award reasonable advocate's and expert witness fees and related costs only to customers who make a substantial contribution to the Commission's decision and for whom participation or intervention in a proceeding without an award of fees imposes a significant financial hardship. The Commission has clarified that the financial hardship test varies by type of customer. (*See* D.98-04-059, *mimeo.*, pp. 33-37, 89.)

In summary, Category 1 and, in part, Category 2 customers must show by providing their own financial information (which may be filed under seal) that they cannot afford, without undue hardship, to pay the cost of participation. Category 3 customers must show that the economic interest of individual members is small in comparison to the cost of participation. For Category 2 customers where representation is authorized to represent a group of customers, the comparison test will not be routinely applied. The question of which test to apply will be determined from the form of customer asserted and customer's specific financial hardship showing.

Pub. Util. Code § 1804 (a)(2)(B) allows the customer to include with the NOI a showing that participation in the hearing or proceeding would pose a significant financial hardship. Alternatively, such a showing shall be included with the request for compensation submitted pursuant to § 1804(c). If a customer has received a finding of significant financial hardship in any proceeding, § 1804(b)(1) creates a rebuttable presumption that the customer is eligible for

compensation in other proceedings which commence within one year of the date of the finding.

The Commission found that TURN satisfies the requirement for significant financial hardship in the March 25, 2003 Ruling issued in Rulemaking 02-07-050. This proceeding commenced within one year of the date of that finding. Therefore, I find that TURN has met the required showing of “significant financial hardship” for the purposes of its NOI in this proceeding.

Today’s ruling goes only to the eligibility of TURN to claim compensation. It does not address the final merits of the claims, which the Commission will address after parties have documented expenses in greater detail and demonstrated substantial contribution to the proceeding, as provided in Pub. Util. Code Article 5.

IT IS RULED that:

1. The Utility Reform Network (TURN) timely filed a Notice of Intent for compensation in this proceeding.
2. TURN is a Category 3 customer.
3. TURN has fulfilled the requirements of Pub. Util. Code § 1804(a)(2)(A).
4. TURN has demonstrated “significant financial hardship.”
5. TURN is eligible for an award of compensation for a substantial contribution in this proceeding.

Dated September 22, 2003, at San Francisco, California.

/s/ Meg Gottstein
Meg Gottstein
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Addressing Eligibility for Compensation Award on all parties of record in this proceeding or their attorneys of record.

Dated September 22, 2003, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

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